

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.640 of 2017

S. Nagarajan alias Nagaraj

... Appellant/Petitioner

Vs

1. P.Balasubramanian

2. The National Insurance Company Limited,
1st Floor, Karthikeya Complex,
483, B-10, Mettur Main Road,
Branch Office, Bhavani,
Erode District.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.4 of 2009, on the file of the Motor Accidents Claims Tribunal cum Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.M.Selvam

For R1 : No appearance

For R2 : Mr.J.Chandran

JUDGMENT

According to the appellant/claimant, on 20.12.2007 at about 08.00 hours, he was proceeding in his TVS 50 bearing Registration No.TAS 3385 from Dharmapuri to Salem. At that time, a goods vehicle bearing Registration No.TN 33 U 7889 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the appellant/claimant. Due to the said impact, the appellant sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the goods vehicle, he filed a claim petition, claiming compensation of Rs.7,00,000/-. The Tribunal, after considering the oral and documentary evidence available on

record, awarded a total compensation of Rs.98,700/- with interest at 6% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant/claimant has preferred this appeal seeking enhancement of the same.

2. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.45,000/- towards permanent disability; the compensation awarded under other heads are also very meagre; further, no amount was awarded towards future medical expenses etc; and hence, the award of the Tribunal requires interference by way of enhancement in the hands of this Court.

3. Per contra, the learned counsel for the second respondent/ insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

4. Heard the learned counsel on either side and perused the materials available on record.

5. This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect of negligence as well as the liability of the second respondent insurance company to pay compensation.

6. It is seen from the award, the appellant/claimant himself examined as P.W.1, who deposed that at the time of accident, he was 48 years and was earning Rs.10,000/- per month by doing agriculture and cattle business; due to the impact of the accident, he sustained fracture in hip portion, besides receiving grievous injuries. The doctor was examined as P.W.2 and according to him, the appellant/claimant sustained 45% permanent disability. Ex.P9 is the permanent disability certificate and Ex.P10 is the X-ray. Considering those oral and documentary evidence, the Tribunal has awarded only a sum of Rs.45,000/- towards permanent disability, which, in the opinion of this Court, appears to be on the lower side and hence, the same is hereby enhanced to Rs.90,000/- by awarding Rs.2,000/- per percentage of disability. Further, the Tribunal has not awarded any amount towards Future Medical expenses. Considering the nature of the injuries sustained by the appellant/claimant, this Court is inclined to grant a sum of Rs.5,000/- towards future Medical expenses and the same is hereby awarded. However, there is no modification with regard to the award of Rs.5,000/- towards Transport to hospital and Extra nourishment,

Rs.10,000/- towards Pain and suffering and mental agony, Rs.9,000/- towards partial loss of earning, Rs.2,000/- towards Assistance in hospital, Rs.27,613.95/- towards Medical bills. Thus, the compensation awarded by the Tribunal is enhanced from Rs.98,700/- to Rs.1,48,700/- the details of which read as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Transport to hospital and Extra nourishment	5,000/-	5,000/-
Pain and suffering and mental agony	10,000/-	10,000/-
Permanent disability at 45%	45,000/-	90,000/-
Partial loss of earning	9,000/-	9,000/-
Assistance in hospital	2,000/-	2,000/-
Medical bills	27,613.95/-	27,613.95/-
Future Medical expenses	---	5,000/-
Total	98,613.95/- rounded off Rs.98,700/-	1,48,613.95/- rounded off Rs.1,48,700/-

However, it is made clear that the enhanced sum of Rs.50,000/- (Rs.1,48,700/- (-) Rs.98,700/-) shall carry interest only at 6% pa from the date of filing of this appeal.

7. In the result, this appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the entire compensation amount, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter. It is needless to state that the appellant shall pay the necessary court fee for the enhancement compensation, if not, already paid.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Principal Subordinate Judge,
Krishnagiri.

Copy to
The Section Officer,
VR Section, Madras High Court.

+1 CC to Mr.J.Chandran, Advocate sr 95853.

+1 CC to Mr.M.Selvam, Advocate sr 95440.

C.M.A.No.640 of 2017

BS (CO)
SP (24/08/2020)



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